IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.772 of 2007

For Approval and Signature :

HONOURABLE THE CHIEF JUSTICE MR.J.M.PANCHAL

HON'BLE MR.JUSTICE BHANWAROO KHAN

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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Sajjan Devi & Ors. - Appellants
Versus
Additional District Judge no.1, Bhilwara & ors. - Respondents

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Appearance :
Mr. Rajesh Choudhary, for
Mr. Suresh Shrimali, for the appellants.

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CORAM: HONOURABLE THE CHIEF JUSTICE MR.J.M.PANCHAL
and
HONOURABLE MR.JUSTICE BHANWAROO KHAN

Date : September 26, 2007

ORAL JUDGMENT

(Per : HONOURABLE THE CHIEF JUSTICE MR.J.M.PANCHAL)

The instant appeal is directed against judgment dated May 17, 2007 rendered by the learned Single Judge in S.B. Civil Writ Petition no.2219/2007

by which the prayer made by the appellants to set aside judgment dated January 8, 2007 rendered by the First Appellate Court upholding the order dated September 21, 2004 passed by the trial court dismissing the application submitted by the appellants for temporary injunction, is refused.

The appellants claim to have share in the suit property. According to them, they were in possession but their possession was sought to be disturbed by the respondent no.3. Therefore, they have filed a suit claiming permanent injunction against the respondent no.3 restraining him from interfering with their possession. Along with the suit, the appellants submitted an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure and claimed temporary injunction against the respondent no.3 to restrain him from interfering with their possession. The trial court appointed a Commissioner to ascertain as to whether the appellants were in possession of the suit property or not. The Commissioner submitted his report mentioning inter alia that the appellants were not in possession of the disputed property. Therefore, the trial court dismissed the application submitted by the appellants under Order 39 Rule 1 and 2 CPC by order dated September 21, 2004.

Feeling aggrieved, the appellants filed an appeal before the first appellate Court. The appellate Court dismissed the same by judgment dated January 8, 2007. Thereupon the appellants invoked extra ordinary jurisdiction of this Court under Article 226 & 227 of the Constitution by instituting S.B. Civil Writ Petition no.2219/2007. The learned Single Judge has dismissed the same by a speaking order dated May 17,

2007 giving rise to the instant appeal.

This Court has heard the learned counsel for the appellants and considered the documents forming part of the original petition.

The plea that as the defendants have admitted that the appellants have share in the property, the relief claimed in the application submitted under Order 39 Rule 1 and 2 CPC should have been granted, cannot be accepted. From the record of the case and more particularly, from the report of the Commissioner, it is evident that the appellants were never in possession of the disputed property. Therefore, this Court is of the firm opinion that the trial court was justified in rejecting the application submitted by the appellants under Order 39 Rule 1 and 2 CPC.

The plea that the respondents should have been restrained from alienating the property during pendency of the suit, and therefore the application submitted by the appellant should have been accepted in part, also cannot be accepted, in as much as, the learned Single Judge has rightly observed that the provisions of Section 52 of the Transfer of Property Act would protect the interest of the appellants. This Court finds that though the learned Single Judge has not found any substance in the petition filed by the appellants, a just direction is given to the trial court to dispose of the suit expeditiously.

On the facts and in the circumstances of the case, this Court is of the opinion that no ground is

made out by the learned counsel for the appellants to interfere with the order impugned in the appeal, and therefore the appeal which lacks merits, deserves dismissal.

For the foregoing reasons, the appeal fails and is dismissed.

[BHANWAROO KHAN],J. [J.M.PANCHAL],CJ.

Praveen